IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.96 of 1995

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
INDUSTRIAL MACHINERY MFG.PVT. LTD. - Respondent(s)

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Appearance :
MR TANVISH U BHATT for Applicant(s) : 1,
MR MANISH J SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 19/01/2006
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following two

questions under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of Commissioner of Income-tax:

1. Whether, the Appellate Tribunal is right in law and on facts in holding that against the order passed by the Income-tax Officer under section 154 of the Act appeal is maintainable under section 246 of the Act?

2. Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee is entitled to interest under section 214 of the Income-tax Act ?

2. The Assessment Year is 1983-84. While passing order giving effect to the order of the Tribunal on 18th August, 1988 the Assessing Officer did not grant interest under Section 214 of the Act though the order had resulted in refund. The assessee carried the matter in appeal before the Commissioner (Appeals), who dismissed the appeal by holding that *“No appeal lies to CIT(A) under section 246 against the assessing officer's non-*

granting of interest u/s.214 of the Income-tax Act".

3. The assessee carried the matter in appeal before the Tribunal and succeeded. The Tribunal accepted the claim of the assessee that an appeal is maintainable under Section 246(1)(f) of the Act against an order made by the Assessing Officer under Section 154 of the Act. The Tribunal, for this purpose placed reliance on the Bombay High Court decision in the case of Empire Industries Ltd. Vs. Commissioner of Income-tax, [1992] 193 ITR 295 (Bom.). The Tribunal also accepted the contention of the assessee that the case was covered by decision of jurisdictional High Court in the case of Bardolia Textile Mills Vs. Income-tax Officer, Circle-II, Ward-E, Surat, [1985] 151 ITR 389 (Guj.) (F.B.). At the same time the Tribunal restored the matter to the Assessing Officer for fresh consideration and to give necessary relief in light of the aforesaid decisions.

4. Heard Mr.Tanvish U. Bhatt, learned Standing

Counsel for the applicant-revenue, and Mr.M.J.Shah, learned advocate for the respondent.

5. In relation to question No.1, if the question is read *de hors* the facts of the case then the same would become academic. As can be seen from provisions of Section 246(1)(f) of the Act it is apparent that any order under Section 154 of the Act which has the effect of enhancing the assessment or reducing refund or an order refusing to allow the claim made by the assessee is an appealable order before the Appellate Assistant Commissioner. Under Section 246(2)(a) by the process of incorporation the said provision viz. 246(1)(f) of the Act finds mention and hence, the same is also appealable before the Commissioner (Appeals). Therefore, the question is required to be answered in the affirmative.

6. However, in the facts of the present case the

Assessing Officer has merely titled the order as 'Order giving effect to Tribunal's order'. The said order has not been termed to be an order under Section 154 of the Act, but the Commissioner (Appeals) has read the same as being an order under Section 154 of the Act. However, the Commissioner (Appeals) has not non suited the assessee on the said count. As noticed hereinbefore the Commissioner (Appeals) has held that an order refusing to grant interest under Section 214 of the Act is not appealable.

7. The Tribunal has proceeded on the footing that even if it is an order under Section 154 of the Act it is an appealable order. It is settled position in law that an order giving effect to the appellate order bears the same characteristic as the original order against which appeal was filed viz. in this case, assessment order, and it is an accepted fact that the assessment order is an appealable

order. An appeal is nothing else but continuation of the original proceedings and hence, an order passed to give effect to the findings of the appellate authority cannot be different in nature. Therefore also, the Tribunal was justified in holding that the order refusing to grant interest under Section 214 of the Act was an appealable order and the Commissioner (Appeals) was not justified in not entertaining the appeal.

8. On merits of the controversy, the Tribunal has directed the Assessing Officer to grant relief in accordance with the ratio of the decision of Full Bench of this High Court in the case of Bardolia Textile Mills (supra) and no infirmity can be found qua the said direction. In fact the learned counsel for the applicant-revenue was not in a position to point out as to how the said direction was incorrect in any manner whatsoever.

9. In the result, both the questions are answered

in the affirmative i.e. in favour of the assessee and against the revenue.

10. The reference stands disposed of accordingly, with no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**